



THE CITY OF NEW YORK
LAW DEPARTMENT

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MICHAEL A. CARDOZO
Corporation Counsel

December 15, 2011

Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: USA v. City, Civil Action No.: 07 CV 2067 (NGG)(RLM)
Law Dept. No.: 2007-01744

Dear Judge Garaufis:

The City of New York has filed a motion seeking an order directing that Dr. Shane Pittman, the test development expert advising Special Master Mary Jo White with respect to the development of Exam Nos. 2000 and 2500, be appointed as the third member of a three-person test validation board required by New York Civil Service Law § 50-a ("TVB"). The City also seeks an adjustment to the deadline set forth in the statute by which a test-taker must submit a protest to answers on the test. The requested order would apply only to Exam Nos. 2000 and 2500. The parties agree that unless this administrative procedure is modified to reconfigure the TVB so that the review of challenges to the questions and answers for Exam Nos. 2000 and 2500 is conducted primarily by testing experts there is a substantial risk that the validity and lawfulness of the new selection procedure will be undermined. Consequently, the parties and the Special Master do not object to the relief sought and they will not be opposing the motion.

However, under New York Civil Service Law §50-a, the TVB is to be comprised of a City representative, a union representative, and a member chosen by the City and the union. An order directing that Dr. Pittman be the third member of the TVB affects the United Firefighters Association ("UFA") which would ordinarily have a voice in selecting the third member. I have discussed this motion with Michael Block of Sullivan Papain Block McGrath & Cannavo, P.C., counsel for the UFA. He anticipates that the UFA will oppose the motion and has agreed to seek to intervene and serve any opposition papers by January 10, 2012. The City's reply would be due on January 17, 2012. The City respectfully requests that any other individual

or entity who wishes to be heard on this motion be required to move to intervene and submit all papers on this motion by January 10, 2012. The City would reply by January 17, 2012.

Test development is currently on schedule for test administration to begin in late February or March 2012. Assuming that schedule holds, test-takers will be allowed to review their exams and decide whether to protest answers starting as early as April 16. We anticipate that the TVB would begin to meet to review protests on or about May 4, 2012. A ruling on this motion is a necessary precursor to the start of the TVB review process.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael A. Cardozo", with a stylized flourish at the end.

Michael A. Cardozo

Enc.

Cc: All Counsel
Special Master White